

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CORDALL NEAL,

Petitioner,

v.

Case No. 05-CV-74000-DT

RAYMOND BOOKER,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION TO AMEND HIS HABEAS PETITION,
DIRECTING RESPONDENT TO FILE THE STATE COURT RECORD AND
DENYING PETITIONER'S MOTION FOR AN EVIDENTIARY HEARING**

I. BACKGROUND

In 2005, Petitioner Cordall Neal filed a timely *pro se* habeas corpus petition, which alleged four grounds for relief: (1) the trial court erred in denying Petitioner's motion to suppress his statements, (2) the trial court abused its discretion in denying Petitioner's motion to quash the bindover, (3) the trial court erred in refusing to instruct on self-defense and (4) the prosecutor's inflammatory comments deprived Petitioner of a fair trial. Petitioner explained in a subsequent motion to stay the case that he raised two additional claims in the Michigan Supreme Court, but not in the Michigan Court of Appeals. He petitioned the court to stay his case so that he could return to state court and fully exhaust the two additional claims. This court has numbered and labeled the two additional claims as (5) ineffective assistance of counsel and (6) insufficiency of the evidence.

The court granted Petitioner's motion for a stay and closed this case for statistical purposes. Petitioner then raised claims five and six in a motion for relief from judgment in the trial court. He was unsuccessful in the trial court and on appeal from the trial court's decision.

On December 19, 2006, Petitioner returned to federal court with another habeas corpus petition. The form petition referenced only two claims, although Petitioner attached to the form petition his application for leave to appeal in the Michigan Supreme Court on direct appeal. The state court application and brief includes all six habeas claims. The Court consolidated the two habeas cases and then dismissed the 2006 case.

On July 18, 2007, Respondent filed an answer to the habeas petition through counsel. He construed the habeas petition to raise only the two claims that Petitioner presented to the trial court in his motion for relief from judgment. Petitioner subsequently filed a motion to amend his habeas petition and a motion for an evidentiary hearing, currently pending before the court.

II. DISCUSSION

A. Motion to Amend

Petitioner's motion to amend seeks permission to file an amended petition raising the first, fourth, fifth and sixth habeas claims. The court believes that Petitioner is attempting to have the court consider all six of his habeas claims. Because all six claims are "tied to a common core of operative facts," neither the second habeas petition, nor the proposed amended petition, are barred by the one-year statute of limitations found in 28 U.S.C. § 2244(d). *Mayle v. Felix*, 545 U.S. 644, 664 (2005).

Accordingly, the court will grant Petitioner's motion to amend.

B. Motion for an Evidentiary Hearing

Petitioner seeks an evidentiary hearing on his claims that his trial and appellate attorneys were ineffective. Respondent argues that the allegations about trial counsel are procedurally defaulted. After reviewing Petitioner's arguments, the court is not persuaded that Petitioner's trial or appellate counsel was constitutionally ineffective. Accordingly, the court will deny Petitioner's motion for an evidentiary hearing.

III. CONCLUSION

IT IS ORDERED that Petitioner's motion to amend [Dkt. # 18] is GRANTED. The Clerk of Court shall file the amended petition, and Respondent shall file any supplemental answer and the relevant state court record on or by **November 8, 2007**.

IT IS FURTHER ORDERED that Petitioner's motion for an evidentiary hearing [Dkt. # 17] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 15, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 15, 2007, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522